

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ISAGANI DESLATE AND ROMY FRANCISCO ALIAS “ROMEO
FRANCISCO”; ACCUSED. ISAGANI DESLATE, APPELLANT.**

G.R. No. 87807. December 21, 1990

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The accused, Isagani Deslate, appeals from the decision of the Regional Trial Court,[1] convicting him for the murder of Roberto Cipriano and sentencing him to reclusion perpetua.

The accused was charged originally with Romy Francisco; however, the latter has remained at large and has a warrant out for his arrest.

The evidence for the prosecution shows that on December 7, 1980, the victim was with Ben San Miguel in Barangay Estancia, Kalibo, Aklan, attending a town fiesta. At or about 9:30 in the evening, the two were at a nearby store where San Miguel purchased cigarettes. The victim was then settled on a bench when the accused Romy Francisco emerged from behind, and thrust a knife on his back. By instinct, he rose to confront his assailant and as he faced him, the accused, Isagani Deslate, appeared and buried his own knife on his chest. As he fell down, his companion, San Miguel, scampered away. Deslate gave him a chase but lost him.

Placido Aguirre told the court further that he saw Francisco and Deslate on the night in question walking toward the store, and heard Deslate tell Francisco: "he is ... the one." [2] Moments later, he saw Francisco knifing the victim at the back. The latter, he said, was seated on a bench facing Kalibo (meaning, the opposite direction), and who, upon being hit, swung his head to the right. As he turned, however, Deslate lunged at him with a knife and hit him on his chest. The victim fell down.

The victim was shortly dead, and:

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It is established that the victim suffered two (2) stab wounds which are as follows: (1) Stab wound, chest, anterior right one inch in length, 1/2 inch above the right nipple with non-clotting blood oozing from it, (2) Stab wound back - one inch in length, nine inches below the nape of the neck, with non-clotting blood oozing from it.

One of the internal findings is that the right lung, the inferior lobe was hit and the presence of wound therein is one inch in length.

It is further established that the cause of death is hemorrhage, severe due to penetrating stab wound, chest, right.[3]

Deslate denied the above criminal imputations and insisted that it was Francisco and a certain Boy Oquendo who killed Roberto Cipriano. He admitted that he was there (at the scene of the crime) but maintained that he never

lifted a finger to harm the victim. He said that he did not render the latter assistance because "[i]t did not come to [my] mind because [I was] afraid." [4]

As we indicated at the outset, the trial court convicted Deslate of murder. He now urges a reversal, contending that the court a quo erred in accepting the evidence for the prosecution and finding him guilty on the basis thereof. We are not, however, convinced that a reversal is called for. Accordingly, we affirm.

Isagani Deslate has been positively identified as one of the two assailants, who knifed the victim to death. He has shown no motive whatsoever for the prosecution's witnesses, Ben San Miguel and Placido Aguirre, to manufacture their testimonies at the witness stand.

His defense is one of mere denial, and we have time and again held that denial can not prevail over positive identification. And so also, that credibility of witnesses is left to the sound discretion of the judge and in accepting one testimony and rejecting another, he can not be overturned by the appellate tribunal unless he has seriously abused his discretion. We do not find that to be the case here, and quite to the contrary, the records themselves reveal that he, truly, is guilty beyond reasonable doubt.

The trial court did not err in rejecting his story, which we quote:

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Accused Isagani Deslate's defense is a denial, imputing the killing not only to accused Romy Francisco who has been at large but also to another person by the name of Boy Oquendo who had long been dead and who can no longer protest against said imputation of a crime to him as his lips had long been sealed by death. [5]

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Moreover, according to defense witness, Endelicio Panado, Boy Oquendo (rather than Deslate) stabbed the victim at the back; however, Teresita Amaradora, also a defense witness, testified that he, Oquendo, hit him on the chest. As the lower court observed:

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But then defense witness Endelicio Panado was asked in the direct examination, "when Robert Cipriano fell after he was stabbed by Romeo Francisco what happened?" Panado's answer was, "Boy Oquendo stabbed Robert Cipriano hitting Robert Cipriano at his back."

On the other hand, defense witness Teresita Amaradora was asked in the direct examination, "When boy Oquendo stab Robert Cipriano, what part of his body was hit?" Her answer was, "Robert Cipriano was hit on his chest." [6]

The Court agrees with these findings and the appellant can not now pretend that his version is better.

His parting shot that the trial judge erred in imposing reclusion perpetua (there being no aggravating or mitigating circumstances), can neither prosper. There is no merit in his contention that the penalty for murder, in view of the provision of the Constitution banning death sentences, has been amended to reclusion temporal maximum to reclusion perpetua, for which reason, the proper penalty is allegedly the middle ground between these two penalties. In the case of *People v. Muñoz*, [7] the Court held, over the dissent of six Justices, [8] that the penalty for murder is still reclusion temporal maximum to death, although where death appears to be the proper penalty, the court shall not impose it, but shall sentence the accused to reclusion perpetua. Notwithstanding the aforementioned dissent, Munoz has apparently gone down as the prevailing law.

There being no aggravating nor mitigating circumstances that attended the offense, reclusion perpetua is the

proper penalty.[9]

That Isagani Deslate in killing Robert Cipriano, is guilty of murder, is justified by the fact that the assault was attended by treachery, in which he stabbed the latter with no warning and with no risk to himself.

WHEREFORE, the decision appealed from is AFFIRMED. Costs against the appellant.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Branch 3, Kalibo, Aklan; Hon. Gerardo Pepito, Presiding Judge.

[2] Rollo, 19.

[3] Id., 20.

[4] Id., 55.

[5] Id., 21-22.

[6] Id., 21-22.

[7] G.R. Nos. L-38968-70, February 9, 1989, 170 SCRA 107; Narvasa, Melencio-Herrera, Paras, Sarmiento, Cortes, and Regalado, JJ., dissenting.

[8] The ponente was one of them.

[9] See supra.

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